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and as this can only be done by delivery of the writ to a competent officer, non-delivery renders the writ a nullity. A writ left in the office of the clerk or delivered to a sheriff with instructions not to execute is not issued. *FREE-MAN*, EXECUTIONS, Vol. 1, § 9 a; *Burton v. Deleplain*, 25 Mo. App. 376; *Gilmore v. Davis*, 84 Ill. 487; *Pease v. Ritchey*, 132 Ill. 638; *Kelly v. Vincent*, 8 Ohio St. 416; *Howes v. Cameron*, 23 Fed. Rep. 324; *Burrell v. Hollands*, 78 Hun (N. Y.) 583; *McDonald v. Fuller*, 11 S. Dak. 355, 74 Am. St. Rep. 815; *Mollison v. Eaton*, 16 Minn. 426, 10 Am. Rep. 150; *Gowan v. Fountain*, 50 Minn. 264, 52 N. W. 862.

HABEAS CORPUS—CONTROL AND CUSTODY OF CHILD.—Where a mother, having articulated her two infant children, aged respectively seven and five, to a stranger in Georgia, who has maintained them decently and lovingly, and the mother, in her own name, instituted habeas corpus proceedings to secure possession of the children, alleging that the master retained them unlawfully and wrongfully, *held*, the writ was rightly discharged, and the custody of the children awarded to the respondent. *Robertson v. Bass* (1906), — Fla. —, 42 So. Rep. 243.

At the time of the articling of the children, Mrs. Robertson, then Mrs. Boyd, with her five children, was living in Georgia. Some matters of disagreement as to temporarily keeping the children were overcome when Mrs. Boyd married Mr. Smith, who was hostile to the children, and articles of agreement under seal were drawn up, by which Mr. Bass was to keep the children until they reached the ages respectively of 21 and 18. Now Mrs. Smith has married Mr. Robertson, a man of means, and who is friendly towards the children, and the mother seeks to regain possession of them by this writ. The ages of the children now are respectively seven and five, and they were not examined as to their preference between the homes. The Georgia law regarding a woman's right to contract differs from the Florida law, even it seems allowing her to contract away parental rights. In the principal case it does not appear that the children are in any way restrained of their liberty. But it seems that the entire question in issue is as to the rights of the parties. It has been decided, when the writ is brought by a guardian, where a ward had been forcibly removed by a parent from the possession of the guardian, that the court can not entertain jurisdiction of a writ of habeas corpus to restore the ward to the guardian, unless the ward is restrained of its liberty. *Foster v. Alston*, 7 Miss. (6 How.) 406; *State v. Cheeseman*, 5 N. J. L. (2 Southard.) 511. And the writ will not lie for the custody of an infant nine years old, already in the custody of its legally constituted guardian, as it cannot be said to be under legal restraint. *People v. Wilcox*, 22 Barb. (N. Y.) 178. Nor will the writ lie by the master to the father of the child when the latter has covenanted, and the infant prefers to remain with its father. *People v. Pillow*, 3 N. Y. Sup. Ct. (1 Sandf.) 672. The court in the principal case states that such controversies as the one at bar depend upon three matters, and decides primarily upon two of these three, viz., that of the master—his attachment for the children, and that of the infants, whose condition will not be materially bettered by the return

of them to their mother; and, inasmuch as, it has been several years since Mr. Bass took them into his household, the court holds that the ties of companionship have likely become stronger than the ties of blood, and the mother is estopped to deny the effect of her deed. The court is upheld in this in *Maples v. Maples*, 49 Miss. 393 (1873). The contrary was held in *State v. Clover*, 16 N. J. L. (1 Har.) 419, where the court ordered the child delivered to the mother, where on habeas corpus the return of the defendant showed that the child was intrusted to them with the consent of the mother, to live and remain with them until full age, and the child wished to remain. And again, in *Hoxsie v. Potter*, 16 R. I. 374 (1888), the mother was refused the return of the child upon bringing the writ, but here she had given an infant of three months to deceased husband's aunt, and it remained with her nine years, and the mother visited it once and asked that it be allowed to visit her. A little stronger than this is the principal case, in which there is no tie of blood. Also it would seem that the laws of Georgia were not strictly complied with. It was held in *Commonwealth v. Atkinson*, 8 Phila. 375, that where indenture of apprenticeship is defective, habeas corpus is the proper method. And the cases seem to hold that the desires or preferences of the child will be consulted when it has reached an age of discretion. *Woodruff v. Conley*, 50 Ala. 304 (1874); *Commonwealth v. Hammond*, 27 Mass. (10 Pick.) 274 (1830); *Merrit v. Swinley*, 82 Va. 433 (1886). It would seem, then, that the principal case is in line with the weight of authority, but see *Queen v. Clarke*, *In re Alicia Race*, C. of Q. B., 7. ELLIS & BLACKBURN, 185, 1857, for a resume of law and argument on both sides of the question.

HOMESTEAD—CONVEYANCES—JOINDER OF HUSBAND AND WIFE.—In 1879, Jacob Lott owned and lived upon one hundred and forty acres of land. The house and buildings were upon the north seventy acres of this one hundred and forty. At that time he made an oral arrangement with his two sons by which he gave (as far as he could) moieties of his farm and put them in possession thereof. His wife executed and delivered to them quit claim deeds as part of the transaction. Lott deeded to his sons their respective parcels in 1900 and died in 1901. Ejectment was brought by the defendant to recover a portion of the north seventy acres upon the claim that part of this land had been the homestead and that there was not a sufficient conveyance. This was a bill to quiet title. *Held*, that these deeds and oral transactions passed no title to the homestead. *Lott et al. v. Lott et al.* (1906), — Mich. —, 109 N. W. Rep. 1126.

The Constitution of Michigan, Article 16, § 2, provides that "alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same." Six of the eight judges were of the opinion that in order to be a valid conveyance there must be a strict compliance with the provisions of the Constitution; that in this case as there was at the most but a written consent by the wife to an oral agreement by the husband, it did not meet the requirements of the Constitution and that these two void attempts at conveyance would not make a valid land contract enforceable in equity against both and thereby avoid the force of the consti-